

CCRB INVESTIGATIVE RECOMMENDATION

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|---|---|-------------------------------------|--|---|---------------------------------|
| Investigator: Robert Manukyan | Team: Squad #6 | CCRB Case #: 201609510 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Tuesday, 11/15/2016 9:40 PM | Location of Incident: West 116th Street and Morningside Avenue | Precinct: 28 | 18 Mo. SOL 5/15/2018 | EO SOL 5/15/2018 | |
| Date/Time CV Reported Tue, 11/15/2016 11:36 PM | CV Reported At: CCRB | How CV Reported: On-line website | Date/Time Received at CCRB Tue, 11/15/2016 11:36 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------|--------|--------|---------|
| 1. DTS Jesus Capo | 01906 | 926640 | 028 PCT |
| 2. POM Jerry Varice | 02787 | 951365 | 028 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. SGT Iran Lopezmaceda | 1652 | 928666 | 028 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------|--|-----------------------------|
| A.DTS Jesus Capo | Abuse: Detective Jesus Capo questioned § 87(2)(b) | |
| B.DTS Jesus Capo | Abuse: Detective Jesus Capo searched the vehicle in which § 87(2)(b) was an occupant. | |
| C.POM Jerry Varice | Abuse: Police Officer Jerry Varice searched the vehicle in which § 87(2)(b) was an occupant. | |
| D.DTS Jesus Capo | Abuse: Detective Jesus Capo frisked § 87(2)(b) | |
| E.DTS Jesus Capo | Abuse: Detective Jesus Capo searched § 87(2)(b) | |
| F.DTS Jesus Capo | Discourtesy: Detective Jesus Capo spoke discourteously to § 87(2)(b) | |

Case Summary

§ 87(2)(b) filed this complaint at the CCRB on November 15, 2016 (BR 01). On November 15, 2016, at approximately 9:40 p.m., Det. Jesus Capo, PO Jerry Varice and Sgt. Lopezmaceda, from the 28th Precinct, observed § 87(2)(b) speed off from the intersection of West 116th Street and Morningside Avenue, in Manhattan. § 87(2)(b) proceeded to run a steady red light and swerve around several vehicles, at which time the officers pulled § 87(2)(b) over. Det. Capo observed marijuana and a utility knife inside of § 87(2)(b)'s vehicle, while PO Varice observed prescription pill bottles with the labels scratched off. § 87(2)(b) was asked to step out of his vehicle, at which point Det. Capo asked him what he had inside (**Allegation A**). Det. Capo and PO Varice then searched the inside of the vehicle, focusing on the driver's seat, front passenger seat, center console and backseat (**Allegation B and C**). Det. Capo subsequently frisked and searched § 87(2)(b) (**Allegation D and E**). At the end of this incident, as the officers were preparing to leave the scene, Det. Capo stated to § 87(2)(b) "Tell me I'm an asshole. Before I leave, tell me I'm an asshole" (**Allegation F**).

§ 87(2)(b) was not arrested but issued a summons for § 87(2)(b). The investigation was unable to obtain any video footage of the incident.

Mediation, Civil and Criminal Histories

- This complaint was suitable for mediation. However, § 87(2)(b) did not agree to pursue mediation § 87(2)(b).
- As of December 20, 2016, § 87(2)(b) has not filed a Notice of Claim in regards to this incident (BR 03).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (BR 04).
- Det. Capo has been a member of the service for 16 years. There are 13 prior complaints, containing 28 allegations, that have been made against him (BR 05). Four of these allegations have been substantiated. A substantiated refusal to provide name and shield allegation (CCRB case #200510189) resulted in the CCRB board recommending charges, but the NYPD disposition imposed instructions. A force allegation (CCRB case #201409865) resulted in the CCRB board recommending charges, but as of December 20, 2016, an NYPD disposition has not been finalized. Stop and frisk allegations (CCRB case #201506397) resulted in the CCRB board recommending formalized training, which was the NYPD disposition as well.
- PO Varice has been a member of the service for 5 years. There are 2 prior complaints, containing 3 allegations that have been made against him (BR 06). None of these allegations have been substantiated.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

Allegation A – Abuse of Authority: Detective Jesus Capo questioned § 87(2)(b) [REDACTED]

Allegation B – Abuse of Authority: Detective Jesus Capo searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant.

Allegation C – Abuse of Authority: PO Jerry Varice searched the vehicle in which § 87(2)(b) [REDACTED] was an occupant.

It is undisputed that Det. Capo and PO Varice searched the inside of § 87(2)(b) [REDACTED]'s vehicle. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]

§ 87(2)(b) [REDACTED] stated (BR 07) that on November 15, 2016, at approximately 9:40 p.m., he was pulled over by unmarked vehicle, which he had not noticed following him. Prior to being stopped, § 87(2)(b) [REDACTED] had not been driving in an illegal manner. Det. Capo immediately approached § 87(2)(b) [REDACTED]'s window and told him to step outside. § 87(2)(b) [REDACTED] was brought to the back of his vehicle, where Det. Capo repeatedly asked him where the drugs and weapons were. Det. Capo interchanged the word drugs with weed and the word weapons with guns. § 87(2)(b) [REDACTED] responded that he had nothing in his possession. Det. Capo asked § 87(2)(b) [REDACTED] where he was coming from multiple times, which § 87(2)(b) [REDACTED] consistently answered every time, stating that he was coming from his barbershop on 6th Street, between Avenue A and Avenue B, and that he was picking up his girlfriend from the front of Columbia University. § 87(2)(b) [REDACTED] also told Det. Capo that his record was clean and without being asked, took out his identification and told the officers to run a search on it, which Sgt. Lopezmaceda did. Sgt. Lopezmaceda then informed the other officers that § 87(2)(b) [REDACTED]'s record was clean.

While § 87(2)(b) [REDACTED] stood at the rear of his car, Det. Capo entered it and searched the driver's side seat. Simultaneously, PO Varice searched the front passenger seat area. As § 87(2)(b) [REDACTED] had his back to his car, he repeatedly attempted to turn around to see where the officers were searching, but every time he attempted to do so Sgt. Lopezmaceda commanded him not to. However, § 87(2)(b) [REDACTED] briefly managed to witness Det. Capo looking through his car's center console while PO Varice was looking through his glove compartment. This search lasted approximately fifteen minutes, after which Det. Capo questioned, frisked and searched § 87(2)(b) [REDACTED]. Det. Capo and PO Varice subsequently searched § 87(2)(b) [REDACTED]'s car for the second time, which § 87(2)(b) [REDACTED] fully observed as he had changed his position. Det. Capo searched the vicinity of the front passenger seat while PO Varice searched the driver's seat, and then both officers looked around the backseat. Det. Capo then obtained § 87(2)(b) [REDACTED]'s license and registration and ultimately issued him a summons for § 87(2)(b) [REDACTED]. § 87(2)(b) [REDACTED] did not

have any weapons or drugs in his vehicle at the time of this incident, which he told the officers. The officers never asked § 87(2)(b) if they could search his car, nor did he ever give them permission to do so.

§ 87(2)(b) provided a phone statement (BR 02) on December 21, 2016, during which time he stated that he did not have any illegal contraband inside of his vehicle at the time of this incident. The officers only recovered one bottle of Adderall, which was unlabeled because § 87(2)(b) had previously taken the label off. However, § 87(2)(b) had a prescription for the Adderall.

Det. Capo stated (BR 08) that while on patrol with PO Varice and Sgt. Lopezmaceda, he observed § 87(2)(b)'s car double-parked and noticed it because it appeared to be out of place, in that it did not resemble the other types of parked vehicles in the area. As the officers drove past § 87(2)(b)'s vehicle, Det. Capo noticed that the windows had a dark tint. The officers ran § 87(2)(b)'s license plate number through their system, which revealed that the vehicle was registered in Queens. The officers circled around the block and then observed that § 87(2)(b)'s vehicle was now on the opposite side of the street. § 87(2)(b) suddenly sped off and made a right turn on a steady red light crossing the yellow double lines in the process, into the opposite lane. § 87(2)(b) proceeded to cut off several vehicles in a reckless manner, at which point Det. Capo made the decision to stop § 87(2)(b). Despite the fact that the officers turned on their lights and sirens in order to notify § 87(2)(b) to stop, § 87(2)(b) drove another seven blocks before pulling over.

Upon approaching § 87(2)(b)'s car, Det. Capo asked § 87(2)(b) where he was coming from and to whom the vehicle belonged. He then requested § 87(2)(b)'s identification. § 87(2)(b) began fumbling to take out his license and the registration, at which time Det. Capo observed a nugget of marijuana in between the driver's seat and driver's side door. The nugget of marijuana was approximately the size of a sunflower seed and was in plain view. Det. Capo did not smell the marijuana. Det. Capo also observed a utility knife, with the blade out, in between § 87(2)(b)'s feet. The knife was on the floor of the driver's seat and was also in plain view. However, Det. Capo could not recall the knife's physical description.

Det. Capo asked § 87(2)(b) to exit his vehicle, at which time he noticed "lumps" in § 87(2)(b)'s pants pockets. Det. Capo proceeded to frisk § 87(2)(b) and then questioned him about the marijuana and knife that he had observed inside of § 87(2)(b)'s car. § 87(2)(b) stated that the marijuana did not belong to him and that the utility knife was for self-defense. After running a check on § 87(2)(b)'s identification information, Det. Capo went to § 87(2)(b)'s car and observed empty pill bottles in the open panel of the driver side door. The pill bottles were in plain view, and in Det. Capo's experience are commonly used to store marijuana. Det. Capo subsequently searched the immediate vicinity of the driver's seat and returned to § 87(2)(b) in order to question him about the empty pill bottles. § 87(2)(b) told Det. Capo that he was going to graduate from a pharmacy school and worked part-time as a pharmacy technician, which is why he was in possession of the bottles.

Det. Capo, along with PO Varice, returned to § 87(2)(b)'s car and observed more pill bottles inside the center console. These bottles were also in plain view, and Det. Capo was able to see them through an open crack in the console cover. Det. Capo entered § 87(2)(b)'s car to examine the bottles further and noticed that they were filled with white pills and had their prescription labels ripped off. Det. Capo then searched the center console and the immediate surrounding area. He went back to § 87(2)(b) and questioned him about the pills and pill bottles inside of his vehicle. § 87(2)(b) told Det. Capo that the pills were Adderall and that

he did not have a prescription for them. Det. Capo proceeded to search and frisk § 87(2)(b) and then returned to § 87(2)(b)'s car one more time, where he observed cigar wraps in the panel of the driver's side door, as well as what appeared to be a prescription pad from Walgreens. Det. Capo questioned § 87(2)(b) about these items and § 87(2)(b) told him that the item he believed was a prescription pad was not and that he was in possession of it because he worked at Walgreens. Det. Capo ultimately explained to § 87(2)(b) why he had been stopped and wrote him a summons for § 87(2)(b). The officers used their discretion not to issue § 87(2)(b) a summons for the criminal possession of a controlled substance and a knife, based on § 87(2)(b)'s clean record.

Det. Capo admitted that at some point in the beginning of this incident, he placed his hand on § 87(2)(b)'s chest, in order to feel his heart-rate. § 87(2)(b)'s heart-rate was very high, which made Det. Capo suspicious as to why § 87(2)(b) was nervous. Neither the knife nor the marijuana was removed from § 87(2)(b)'s vehicle. While Det. Capo had a memo book entry regarding this incident, the entry only detailed the stop and made no record of the pill bottles, marijuana or knife (see NYPD documents). There is no documentation in regards to any of these items, in the form of a voucher or any other NYPD document.

PO Varice stated (BR 09) that the officers observed § 87(2)(b) driving in a reckless manner, by speeding off, running a steady red light and swerving around several vehicles. He also confirmed that the officers had to follow § 87(2)(b) for approximately seven blocks before he finally pulled over. After approaching § 87(2)(b)'s car, PO Varice observed multiple pill bottles with the prescription labels scratched off, in the vicinity of the center console of § 87(2)(b)'s car. These bottles were in plain view and PO Varice observed them while being positioned by § 87(2)(b)'s passenger side window. After an inaudible conversation with Det. Capo, § 87(2)(b) exited his vehicle and Det. Capo placed his hand on § 87(2)(b)'s chest, in order to check § 87(2)(b)'s heart rate, and then asked him why he was so nervous. Det. Capo proceeded to pat down § 87(2)(b) for weapons. PO Varice believed that Det. Capo had observed marijuana and a knife, with the blade open, inside of § 87(2)(b)'s vehicle, because he questioned § 87(2)(b) about these items. PO Varice did not recall how § 87(2)(b) answered these questions. PO Varice did not recall if he personally ever saw the knife or marijuana that Det. Capo had observed inside of § 87(2)(b)'s vehicle. PO Varice asked § 87(2)(b) what was inside of the pill bottles he had in his vehicle and why the labels were scratched off. § 87(2)(b) responded that the pill bottles contained Adderall, but was unable to justify why the labels were scratched off. At this point, § 87(2)(b) could have been placed under arrest for illegally possessing a knife, marijuana and the Adderall pills.

PO Varice proceeded to search the front passenger seat area, backseat and center console for weapons and other contraband. He did not open any compartments. Simultaneously, Det. Capo searched the vicinity of the driver's seat. Neither Det. Capo nor PO Varice recovered any other contraband during this search. Instead of arresting § 87(2)(b) the officers used their discretion to solely issue him a summons for § 87(2)(b), due to the fact that he had a clean record and the officers generally arrested individuals suspected of committing felonies.

Sgt. Lopezmaceda stated (BR 10) that he observed § 87(2)(b) first change lanes without signaling, proceed to recklessly swerve around a car and finally run the steady red light at the intersection of 116th Street and Morningside Avenue, he swerved around a car waiting for the light to change and made a right turn on a steady red light. The officers began to follow § 87(2)(b) without turning on their lights or sirens, throughout which time § 87(2)(b) drove above the speed limit and passed several cars by driving into the opposite lane, against oncoming

traffic. Once the officers turned on their lights and sirens, § 87(2)(b) immediately pulled over, at which point he could have been arrested for § 87(2)(b).

The officers approached § 87(2)(b)'s vehicle and Det. Capo informed him of why he was being stopped and asked him for his license, registration and proof of insurance. After one minute, Det. Capo asked him to exit his vehicle and brought him to the rear of it, where Sgt. Lopezmaceda was positioned. Det. Capo informed Sgt. Lopezmaceda that he had observed marijuana, in plain view, in the vicinity of the driver's side of the vehicle. Det. Capo did not specify how much marijuana he had observed and Sgt. Lopezmaceda did not personally see the marijuana. § 87(2)(b) told the officers that he does not smoke marijuana and that it probably belongs to his father. Sgt. Lopezmaceda stayed with § 87(2)(b) by the rear of his vehicle, while Det. Capo went to search the driver's side and PO Varice went to search the passenger side. As the windows to § 87(2)(b)'s vehicle were tinted, Sgt. Lopezmaceda did not witness what areas of the vehicle were searched.

Det. Capo informed Sgt. Lopezmaceda that he had searched the glove compartment, middle console and backseat of § 87(2)(b)'s vehicle, during which time he had observed a knife, a prescription bottle filled with pills and several other empty prescription bottles with the identification labels scratched off. § 87(2)(b) told the officers that the bottles belonged to his father and had contained Adderall. Sgt. Lopezmaceda believed that Det. Capo told him that he had found the bottles in the vicinity of the backseat of § 87(2)(b)'s vehicle. Det. Capo conducted a brief frisk of § 87(2)(b) in order to see if he had any other weapons on his person, and subsequently put his hand on § 87(2)(b)'s chest, to check his heartbeat. Det. Capo asked § 87(2)(b) why his heart was beating so fast and why he was so nervous, to which § 87(2)(b) replied that it was because he had never been stopped by the police before. Det. Capo then returned to § 87(2)(b)'s vehicle, in order to search for anything he may have previously missed. Sgt. Lopezmaceda again did not see what areas Det. Capo searched, as he remained with § 87(2)(b) by the rear of his vehicle.

Det. Capo ultimately issued § 87(2)(b) a summons for § 87(2)(b), instead of arresting him. Sgt. Lopezmaceda made this decision. By this point, § 87(2)(b) could have been arrested for reckless driving, reckless endangerment, switching lanes without signaling, driving over the yellow lines on the road, the unlawful possession of marijuana and the unlawful possession of a knife. § 87(2)(b) could not have been charged with anything in regards to his possession of the prescription pill bottles containing Adderall, unless the officers learned that § 87(2)(b) was in possession of the pills illegally. Det. Capo never removed the knife he had observed inside of § 87(2)(b)'s vehicle. As Sgt. Lopezmaceda was positioned at the rear of § 87(2)(b)'s vehicle during the entirety of this incident, he never personally saw the knife or marijuana that Det. Capo had observed.

§ 87(2)(g)

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§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: Detective Jesus Capo frisked § 87(2)(b)

Allegation E – Abuse of Authority: Detective Jesus Capo searched § 87(2)(b)

It is undisputed that once § 87(2)(b) exited his vehicle, Det. Capo frisked him. Det. Capo asserts that he never reached inside any of § 87(2)(b)'s pockets; however, he admits to telling § 87(2)(b) to take everything out of his pockets. § 87(2)(g)

§ 87(2)(b) stated (BR 07) that after searching his car, Det. Capo asked him where his “stuff” was multiple times. § 87(2)(b) told Det. Capo that he did not have anything illegal on him, at which point Det. Capo told § 87(2)(b) to take everything out of his pockets. § 87(2)(b) accordingly took out his wallet out of his front-left jeans pocket, money out of his front-right jeans pocket and receipts and business cards he had in his back jeans pocket. Det. Capo then frisked § 87(2)(b)'s torso, back, waist, legs and arms, making physical contact with the outside of § 87(2)(b)'s body. Det. Capo asked § 87(2)(b) to open his jacket and proceeded to frisk the inside of it. Upon frisking the outside of the left inside pocket, Det. Capo reached inside of this pocket and took out the contents, which consisted of a pen and a folded enveloped with a paper inside. Det. Capo then frisked the outside of the right pocket inside of § 87(2)(b)'s jacket and took out the contents of it, which consisted of a packet of “Ice-Breakers” mints. Det. Capo opened the packet and looked inside. Det. Capo did not find any illegal contraband on § 87(2)(b)'s person.

Det. Capo stated (BR 08) that after observing a nugget of marijuana and a knife inside of § 87(2)(b)'s car, he asked § 87(2)(b) to step outside. At that point, he noticed “lumps” in § 87(2)(b)'s pants pockets. Det. Capo proceeded to frisk § 87(2)(b)'s waistband and overcoat. Det. Capo did not search § 87(2)(b)'s pockets.

PO Varice stated (BR 09) that § 87(2)(b) stepped out of his car and appeared nervous. Det. Capo subsequently placed his hand on § 87(2)(b)'s chest to check his heart rate. He asked § 87(2)(b) why he was nervous, to which § 87(2)(b) answered that it was because he has never been in a situation like this before. Det. Capo then frisked § 87(2)(b) for weapons, but PO Varice did not recall which areas of § 87(2)(b)'s body Det. Capo made physical contact with. Det. Capo only made contact with the surface of § 87(2)(b)'s body and did not search his pockets. § 87(2)(b) had a bulge in one of his pants pockets, which was shaped in a way that suggested it could have contained drugs or a weapon. Without being asked to do so, § 87(2)(b) took out what was causing the bulge, which turned out to be money and a stack of PBA cards. § 87(2)(b) was frisked for the officers' safety and this frisk took place after Det. Capo had observed marijuana and a knife inside of § 87(2)(b)'s vehicle.

Sgt. Lopezmaceda stated (BR 10) that after Det. Capo conducted a search of § 87(2)(b)'s vehicle and informed him that he had found a knife, marijuana, and several prescription bottles with their identification labels scratched off, Sgt. Lopezmaceda asked § 87(2)(b)

§ 87(2)(b) if he had any weapons, other than the knife, in his possession. § 87(2)(b) responded that he did not, at which time Det. Capo quickly frisked § 87(2)(b) to make sure he did not have any other weapons on his person. Det. Capo made physical contact with the outside of § 87(2)(b)'s person and Sgt. Lopezmaceda did not witness Det. Capo reach into any of his pockets. Det. Capo subsequently put his hand on § 87(2)(b)'s chest, to check his heartbeat, and asked him why his heart was beating so fast and why he was so nervous. § 87(2)(b) replied that he had never been stopped by the police before. The only bulge on § 87(2)(b)'s person that Sgt. Lopezmaceda had noticed prior to the frisk was caused by a wallet. Nothing was recovered as a result of the frisk and § 87(2)(b) was never searched.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F – Discourtesy: Detective Jesus Capo spoke discourteously to § 87(2)(b)

§ 87(2)(b) stated (BR 07) that after Det. Capo frisked and searched him, he stated three or four times, “Tell me I’m an asshole. Before I leave, tell me I’m an asshole.” § 87(2)(b) responded that he had no right to call Det. Capo an asshole, but that he was just trying to go along with what Det. Capo was doing. Det. Capo was facing § 87(2)(b) when he said this and was about an inch away from him. PO Varice and Sgt. Lopezmaceda were in close proximity to hear Det. Capo make these statements. § 87(2)(b) believed that Det. Capo made these statements in an attempt to harass him, as he was frustrated that § 87(2)(b) had a clean record and that he could not find anything in his car or in his possession. Throughout this incident, § 87(2)(b) believed that Det. Capo had an angry and frustrated demeanor because he was repeating himself and raising his tone of voice. Det. Capo’s body language also made him appear frustrated, as he repeatedly leaned toward § 87(2)(b).

Det. Capo (BR 08) stated that he never said, “Tell me I’m an asshole. Before I leave, tell me I’m an asshole.” Det. Capo did not use any profanity during this incident, nor did any other officer present.

PO Varice stated (BR 09) that he never heard any officer on scene state, “Tell me I’m an asshole. Before I leave, tell me I’m an asshole.”

Sgt. Lopezmaceda stated (BR 10) that Det. Capo never stated, “Tell me I’m an asshole. Before I leave, tell me I’m an asshole” and did not use any profanity during this incident.

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted].

Squad: 6

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|---------------|-----------------|-------|-------|
| Investigator: | _____ | _____ | _____ |
| | Signature | Print | Date |
| Squad Leader: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |
| Reviewer: | _____ | _____ | _____ |
| | Title/Signature | Print | Date |